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- ART. III. — 1. *Report in Favor of the Abolition of the Punishment of Death by Law ; made to the Legislature of the State of New York, April 14, 1841.* By JOHN L. O'SULLIVAN, Member of the Assembly from the City of New York. Second Edition. 1841. 8vo. pp. 168.
2. *Punishment by Death : its Authority and Expediency.* By REV. GEORGE B. CHEEVER. Second Edition, with an Introduction by HON. THEODORE FRELINGHUYSEN. New York. 1843. 12mo. pp. 156.
3. *Essays on the Punishment of Death.* By CHARLES SPEAR, Author of "Titles of Jesus," "Essays on Imprisonment for Debt," &c. Fourth Edition. Boston and London. 1844. 12mo. pp. 237.

OF all forms of government, a republic stands most in need of laws, and of power to execute them. If it be not a government of laws, it is no government at all. Where the people are sovereign, and every man a law-maker, there is the greater need that they make and sustain laws which all will acknowledge, a tribunal to which all must submit. Such a tribunal presupposes a system of restraints and penalties. Penal consequences must be annexed to the violation of law, and some certainty must attend these consequences, or the whole is unmeaning and useless, if not pernicious.

These are axioms. And yet, with these on their lips, a large portion of the people of this republic are talking and acting in direct opposition to them, or entire disregard of their meaning. They are retaining laws in their statute-books which are never enforced ; they are withholding that public expression which alone gives strength to law ; they are erecting tribunals which the laws neither recognize nor allow ; in one quarter, they anticipate even the judgment of the law by a violent execution ; in another, they overawe both judgment and execution by their antipathies or sympathies ; while everywhere, at times, they suffer local interests and excited passions to control, if not to defy, the operation of all laws. This is one view of existing facts. In another direction, there is an increase of the opposite feeling, a jealousy, loyalty, and conservative energy, roused by this very tendency to lawlessness, and as yet holding it in check. Which will

prevail ultimately is not our inquiry. Every one must see that nothing will be gained by pushing to extremes in either direction. If one class think to supersede law, and to find something better even than a Christian government, their destruction is sure. If the other class resolve to see no good in any change, ascribing all dissatisfaction and attempted reform to weak understandings or the worst motives, they may hasten that which they fear. And to both extremes there is, as usual, a tendency. Nothing can surpass the soft sentimentality and one-sided condolence which some persons express in reasoning upon crime and the criminal, complaining of the severity of laws, and tracing all offences to physical disease or unavoidable influences. The charge of malevolence or cruelty in our common jurisprudence, the appeal to pity those who suffer, however justly, the attempt to connect all crime with misfortune rather than guilt, and the disposition to screen the murderer under the plea of insanity, are symptoms which might in themselves be overlooked as indicative only of an unsound mind, did they not strike at the highest truths and eternal distinctions.

But this is not the only extreme. There is another, which seems to us as false, if not as dangerous. It is the grave attempt, stimulated evidently by the opposite folly, to defend our penal code by the first ever given to man ; to urge the oldest severities, not only as justifications, but commands, for all after ages ; to show, as more than one writer has lately attempted to do, that the divine injunction to take the life of the murderer stands on equal authority with the Decalogue, and that to repeal it would be as wicked and fatal as to disregard those ten commandments ; even to argue that Christ's repeal of the Jewish penalties and retaliations was not on account of their injustice, severity, or incongruity with his own religion, but because they had been abused. Indeed, we have seen recently, in the resolutions of some religious body, the broad assertion, that the Mosaic code has never been repealed ; though we have not yet seen any attempt to reinstate its thirty capital offences, including witchcraft, adultery, blasphemy, man-stealing, blood-eating, and Sabbath-breaking. We have seen it asserted that Christ himself reenacted the legal penalty of death for murder, when he said, " All they that take the sword shall perish by the sword." It is declared that the death-penalty is in accordance with

the very mercy of the Christian religion, if not demanded by its great object ; inasmuch as a short term of life is more likely to bring the doomed convict to repentance, while protracted life, though in confinement, would lead only to abuse. Yet more, it is declared that the divine enactment of the law of " life for life " prepared the way for, and helped the efficacy of, the death of the Son of God. Mr. Cheever, in the book whose title we have placed at the head of this article, says, — " God would prevent the cheapening of human life, in order that the value of the sacrifice of Christ's life might not be diminished in men's estimation. In very truth, had no law ever been promulgated annexing the penalty of death to the crime of murder, it is not too much to say that the sacrifice of Christ upon the cross would have lost, in men's minds, something of its dignity." And a writer in the *Biblical Repository* for July, 1843, reasons in defence of the punishment of death from the government of God thus : — " HE visits transgression with uncompromising retribution. HE did not spare even his own Son."

Here is another extreme. We speak of it in no sectarian spirit, for no sect is answerable or censurable for such opinions. We give it first as a simple fact, and then as one of many reasons for subjecting this matter to a rigid and candid investigation. We had ignorantly supposed, until recently, that the Scriptural defence of capital punishment was almost relinquished. We find it not only retained, but renewed and enlarged. Now, if there be ground for this, — if it be verily an original and eternal *command* of God, that the murderer be put to death, and its observance be essential to the principle of obedience, the existence of society, and the salvation of souls, then we say, in all soberness, this nation is guilty before God, and hastening to destruction. For not only is the law of God assailed by many who view it differently, but it is constantly set aside by those who retain and declare it. It is not enforced by those who maintain the right, and possess also the power, to enforce it. The murderer is not put to death. He is liable to it, the law requires it, in every State of our union. But in no one of them are half the murderers convicted, or, if convicted, executed. Here, again, is a fact, and it is a very serious fact, independently of its causes. It is worthy the consideration of all, that the highest sanction of our country's criminal law has no uni-

form or sure validity. It is something, that, while other offences beside murder are made capital in nearly every State, their number ranging from two to twenty, it is hardly ever the case that the law is enforced for any crime but murder. This is something, when considered as indicating the progress of opinion in regard to severity, and as tending to weaken the power of law. It becomes momentous in regard to murder, when it is maintained that the death of the murderer is authorized and required by the law of God and the life of society, and yet the murderer is constantly let off, not merely through popular clamor or morbid sympathy, but also through the conscientiousness of jurors, and the laxity of administration, failing to convict, or pardoning or commuting after conviction.

We have here given the material facts, in the present position of the subject. The least that can be said of them, and probably the feeling of all is, that they demand some action. What shall it be? It may be presumptuous in us to say; we attempt it in no spirit of self-complacency, still less of dogmatism or rash innovation. This is not a question of one side, or one argument; nor is it a subject for the imputation of bad motives. It is not to be assumed that the opponents of capital punishment are either wiser or more humane than its advocates. Nor, again, have its advocates any right to charge upon the opponents a want of principle, as to law or religion. It is pitiful to attempt to identify the proposed reform with moral or social ultraism. Were there no higher principles, there are names on the side of the reform which should save it from that suspicion. We are pained to find even the excellent Chancellor of the New York University, Mr. Frelinghuysen, in his Introduction to Mr. Cheever's book, lending his sanction to the unjust allegation, worthy of weaker men, that to abolish the death-penalty would, in effect, if not in design, proclaim "impunity" to murder. We have more reason to charge impunity upon the present system. Against its friends we bring no charge. Its effect we pronounce worse than neutral; uncertain, unequal, ineffectual, and pernicious. We call for proof of the opposite. Our position is affirmative, not negative; conservative, not destructive. We speak for law; we uphold government. We believe man is selfish enough and corrupt enough to require restraints and penalties. We see

a spirit of lawlessness in the land, a tampering with constitutions, and oaths, and liberty, and life, that call loudly for reproof. We maintain the right of society to impose any restraint or punishment essential to its existence. We see not where it is to derive the right to imprison, especially for life, if it have not also the right to take life. But we deny that its right to take life rests upon any positive command of God, or any sure permission. We deny that it finds the least favor in the precepts of Christ, or the spirit of Christianity. We deny that the death-penalty is justified by any experience of its usefulness, or proof of its necessity. And we throw the burden of proof, for each of these points, on the advocates of the present law.

The alleged proof of a divine command or permission lies in a single passage, if we may not say in a single word. "Whoso sheddeth man's blood, by man shall his blood be shed." — Gen. ix. 6. *Shall*; on that one word, in that one verse, depends the Scriptural argument. Change the word to *will*, which both the Hebrew and the English language permit, and the passage will express simply the great retributive law of God's providence, that violence begetteth violence; as in the Psalms:—"Bloody and deceitful men shall not live out half their days." But leave the passage as it is; the first part of it will bear a different rendering, though the common version seems to us as natural and probable as any. We admit that the Hebrew future often stands for the imperative; but it does not always stand for it; and whether it does here, or has only the force of the future, as in Cain's assertion,—"Every one that findeth me *shall* slay me,"—depends on the context, and other considerations. Thus the whole argument becomes an inference; and different men—men, too, who do not differ in their general religious views—draw different inferences from the context, and express opposite opinions as to the passage. Professor Stuart, of Andover, thinks the Hebrew for "shall be shed" is "the most *passive* form which the language admits." Professor Upham, of Brunswick, says, it has "the indefinite form of the Hebrew future," and finds in it neither command nor permission. Professor Turner, of the Episcopal Seminary, New York, says it may be permissive, but cannot be obligatory. All scholars will allow that the verb is future, and no one can assert more than that it may be im-

perative, and is so in his opinion. Is this proof? Is it a sufficient foundation for the system that has been reared upon it? But grant it; on whom is it imperative? To whom does it give even permission to take life? Its words are, — “By man shall his blood be shed.” And the preceding verse says, — “At the hand of every man’s brother will I require the life of man.” May the murderer be put to death by any man, or by the brother of the murdered man? This is the literal sense, if you adhere to the literal; it is the intimation of the context, if you judge by that. And more, it was the interpretation of the passage in that age, so far as we know of its being used. Singularly enough, it is never afterward referred to in the Bible, though so constantly referred to now. Moses subsequently slew a man, but did not apply the passage or its penalty to his own case. In his code, it is said, — “The revenger of blood himself shall slay the murderer; when he meeteth him, he shall slay him.” There is another clause of the context, which was made a part of the Jewish ritual, but has never been observed by Christians. It is the injunction to abstain from “flesh with the life thereof, which is the blood thereof.” It stands in close connection with the favorite passage. If one be imperative, universal, and perpetual, why not the other?

The proof is not made out; the burden is heavier upon the advocates than they seem aware. They must first show that the passage has necessarily the imperative force; then, that it is a permanent and universal ordinance, though others near it are not; then, that in itself, or the context, it gives to government, and not to individuals, the right and duty of killing the murderer; then, that it was ever applied by the Deity himself, or by any of his servants and commissioned ministers, except in the Mosaic code; and lastly, that, in principle and spirit, it has not been repealed by him who abrogated its fellows, — “An eye for an eye, and a tooth for a tooth.” We have reason to say “its fellows,” for, besides the principle, there is a fact here to which we call earnest heed; namely, that the law of retaliation, which Christ did abrogate, comprised originally the very law of life for life. “Life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” — Deut. xix. 21. Another fact deserves notice. If Jehovah designed this as the principle of social order and eternal justice, is it not remarkable,

that, when he was the only lawgiver, judge, and punisher, he not only spared the life of the murderer, but forbade any one to slay him, and said nothing even of his deserving death? Mr. Cheever has his own way of accounting for this, and using it. He intimates that this "divine lenity" was a chief cause of the wickedness of men before the flood, and was revoked by the Deity when he saw the abuse. "God spared Cain, and the consequence was, since no murder could ever be committed under more aggravating circumstances than that of Abel, that every murderer felt secure." Thus the experiment of a milder legislation, as another writer has declared, was first made by the Deity, and failed! We might ask, if the bloodiest code of Moses answered a better purpose? But no irreverence. Admitting the bold intimation, it does not remove the difficulty. There seems to have been the same "divine lenity," after the supposed enactment of life for life. Moses became a murderer; and God spared him also, though the act was revengeful and deliberate. Before this, but after the command, Simeon and Levi, sons of the patriarch Jacob, committed a treacherous and most foul murder on all the males of a city, because one of them had "defiled their sister"; the same offence, avenged more horribly and infamously, yet in the same way, as that of Mercer recently, where the murderous brother was saved by acclamation. Simeon and Levi were not so rescued, but simply let alone. Jacob reproved them, but no application or mention was made of the existing "imperative law." And omitting all inferior cases in the history, David was a murderer, in every just view; adding this great sin to another, which was also capital in his own code. But he also was spared the ordained penalty. Is the fact, then, established by the passage, by the context, or by subsequent events, that the penalty of life for life was imperative, of universal obligation, always observed and enforced by the Deity, never repealed or even virtually superseded by the Saviour? Is it, can it be, proved?

We have said the proof rests on a single passage. No other passage has ever been quoted for the purpose from the Old Testament, to our knowledge; none so strong, none indeed having the aspect or pretence of a commandment and universal law, can be found in any part of the Scriptures, as all will concede; and should this passage be relinquished,

half the advocates of capital punishment would abandon the ground of divine authority. It is, then, a very serious question, whether this one passage, at the most and the best, is so clear and unquestionable as to be rightfully or safely taken as the foundation of a fearful system of criminal law, for all nations, and all ages, world without end.

If we were willing to turn the question from a serious to a curious and almost ludicrous one, we would go into a particular examination of the passages sometimes adduced from the New Testament. But we can hardly believe that any Christian scholars or reasonable men are in earnest, when they quote, in support of capital punishment, such passages as the declaration of Christ already referred to, and used by most men for the opposite purpose, — “All they that take the sword shall perish by the sword.” It is yet harder to understand the cast of mind in those who think to vindicate this interpretation and strengthen the argument by quoting a similar but even weaker proof, more and more against themselves, from the Apocalypse : — “He that leadeth into captivity shall go into captivity ; he that killeth with the sword must be killed with the sword.” Paul likewise is drawn into the defence, because, when accused and arraigned, he appealed unto Cæsar, and expressed his willingness to suffer the utmost penalty of the existing laws, if guilty : — “If I be an offender, or have committed any thing worthy of death, I refuse not to die.” And again the same apostle’s use of the emblem of office, in describing the power and terror of a ruler, — “He beareth not the sword in vain,” — is brought as additional and conclusive evidence of his opinion, and of the authority of the Christian religion in favor of capital punishment. Lest we be suspected of misrepresentation, we refer the reader to the fifty-second page of Mr. Cheever’s book, where he says, — “There is no other possible view that can be taken of this passage” ; and then quotes Calvin, as calling it “an illustrious place,” to prove, adds Mr. Cheever, “the divine authority of capital punishment.”

These are the arguments drawn from the New Testament. It seemed right to show what they are, and add their weight — or weakness, as others may think — to the law of “blood for blood.” To our mind they prove only the impossibility of bringing the gospel into a league with the gallows. We attempt no answer to them from the gospel itself ; if it

does not answer them by its whole tone, we despair of doing it by any extracts or reasonings of our own. We have thrown the burden of proof on the other side, and we have a right to leave it there. The power of which we speak is tremendous, and they who assume or exercise it must show their warrant. To take life, — to take it on evidence which, in the nature of the case, can scarcely ever be more than presumptive, — especially to doom one murderer, when others as guilty are spared and have been from the beginning, is a fearful use of power, not to be justified by any thing less than the express word of God, and the absolute necessities of human society. In the word of God there is no justification, certainly no proof.

We turn to the argument of expediency, or necessity. Expediency alone can avail nothing against right ; but if a plain *necessity* can be made out, it is but expressing a truism to say, we must yield. And here, again, too much has been assumed, and the advocates forget how much is to be proved. Expediency and necessity are confounded, and both stand upon fear, rather than fact. A man's opinion of what is best is taken as evidence of what is essential ; and the fear of change grows easily into an idea of certain ruin whenever the change shall be made. The worst evils have always been predicted, at every instance of relaxation in the criminal code of any country. Yet in every country that code has been softened and abridged ; England having reduced her capital offences from one hundred and sixty to nine, and practically, it is said, to one ; and the people of our own country, even those opposed to the entire abolition of the punishment of death, demanding, and virtually requiring, that it be confined to murder alone. Yet it is assumed that to relax this last hold would be fatal ; to take life for life is essential to the very life of society ; that the murderer be put to death is a social universal necessity. This is said and repeated. But where is the proof ? We have just given it ; the proof is the assertion. There is no other. The alleged necessity is an opinion, and nothing more. So general an opinion has it been, and held by so many wise and good men, that it would ill become us to say, it is without foundation. But we do say, it is without proof. They who hold the opinion have a right to retain and declare it, but no right to insist that it makes out a case of necessity in favor

of continuing the present law. They have not proved that which they assert. There is no "necessity," except in their associations and fears. These, we own, must often guide us, and define to us law and duty. But whether they may do this in the case of life and death is the single question. And we do say, if it be justly a part of all criminal law, that no jury shall pronounce a man guilty, while there is room for one *reasonable doubt* of his guilt, much more is it the duty of society to save life from that uncertain judgment and awful peril, while there is one "reasonable doubt" of the clear right and absolute necessity. This is not merely an equal, but a paramount duty, inasmuch as it is the first decision, on which all the rest depends, and which involves the whole responsibility. The community are bound to consider themselves the grand jury, whom God and their own act have made judges of the law, as well as the evidence. Blackstone has given us his opinion of the kind of evidence which alone should satisfy us. "To shed the blood of our fellow-creatures is a matter that requires the greatest deliberation, and the fullest conviction of our own authority ; for life is the immediate gift of God to man ; which neither he can resign, nor can it be taken from him, unless by the command or permission of him who gave it, either expressly revealed, or collected from the laws of nature or society, by *clear and indisputable demonstrations.*"

There being no clear and indisputable demonstrations, we can only examine the reasons of an opinion, the grounds of assumption. These may all be reduced to one. It will not be even assumed that there is any "necessity" for capital punishment, except on the principle of "self-defence." The principle of retaliation is forbidden and disclaimed. The principle of reparation has no place. All purpose of revenge is indignantly disowned ; though, from the frequency and emphasis with which we hear it said that the murderer "deserves" to die, we might suspect it. Mr. Livingston tells us, that an exalted and excellent magistrate confessed to him, after yielding other points of defence, "that there was some little feeling of revenge at the bottom of his own opinion" ; and we fear this is common. But we do not charge it. Even if it were so, and were right, it would not help the argument of necessity. Self-defence only can sustain that. The right of self-defence we admit, but we do not

admit that it implies always the right of taking life. That, every one allows, depends upon the emergency. There are many modes of self-defence, and no individual may resort to the extreme mode hastily, however clear may seem to him the right of using it at all ; still less, society. The cases are not even parallel ; the individual kills his assailant, to save himself ; society kills the murderer, to save — whom ? Not the murdered man ; he can be neither saved nor restored, nor can his loss be repaired by another loss. Nor can society save itself, unless from the repetition of the outrage, by the man himself, or by others. Here is the whole argument. It is the opinion and the assertion, that there is “no other way ” in which it is possible to prevent a murderer from repeating the offence, or deter others from the same. This also the advocates are bound to prove. And they never can prove it, except by trying other ways, and finding that they utterly fail. Is it not clear, that, on all principles of natural right, abstract reason, or Christian law, men are bound to try other ways first, instead of last or not at all, before assuming the ground of necessity, or even expediency ?

We deny both the reasoning and the fact ; and we pass now to the consideration of facts.

1. Capital punishment has not prevented murder. It has been often inflicted, it has slain its thousands and tens of thousands, and still its work goes on, and still its power is defied. No man can say, that it has had power in proportion to its magnitude, or to that expectation which has been its defence. No man can say, that it has done any good compared with the sacrifice of a single innocent life, even if we think nothing of the violent termination of a guilty life. Indeed, who can show that it has done any good at all ? It has not prevented murder. It has not lessened the number of murders. So many have they been, that, had capital punishment been abolished, the frequency of crime would be ascribed to that. Seventy-two thousand persons were put to death in England, in the single reign of Henry the Eighth, making two thousand a year. But instead of deterring or preventing others, the number of victims seemed but to provoke anew, as by the sight of fresh blood, the appetite for crime and murder. The whole history of England and of France gives the same lesson. And the history

of all nations, it is believed, will sustain the remark of Beccaria : — “ The countries and times most notorious for severity of punishments were always those in which the most bloody and inhuman actions, and the most atrocious crimes, were committed.” The principle, indeed, that merciful laws afford more protection to society than severe, has the authority and express testimony of the first civilians in the world. By the strong voice of facts, the argument from self-defence is turned against the advocates of capital punishment. It has done its best and its worst for more than five thousand years. It has not abolished murder, or lessened the number of its victims. How much longer term is needed for trial ?

2. Capital punishment has never been sure or equal. It has never been consistent with itself, or with the boast of its benefits. None of its advocates have tried or trusted their own professions. They have set it forth as a divine commandment, and they themselves have violated it. They have declared that the good of society required it, and they have cheated society of half its blessings. They insist that every murderer forfeits his life, and they deliberately suffer half the convicted murderers to live. Always has it been so ; never was the law uniformly executed. To go no farther back than our own era, — though, as we have seen, we may go back to the beginning of the world, — from the days of Pilate, who “ was wont to release unto the people a prisoner, whom they would,” murderers have been released in every age, at the demand of the people, or by the policy of rulers. We find recorded, as a single fact in a single land, and recorded by an opposer of the abolition of the death-penalty, that, “ out of 23,700 persons, who were convicted of crimes of various grade made capital by the laws of England, from the year 1813 to 1833, not more than 933 were actually executed ; presenting the remarkable spectacle of about twenty-five convicts reprieved from the gallows for every one actually executed.” There is no certainty in this punishment. And certainty, not severity, is the admitted principle of power in all criminal jurisprudence. Not only is it true that certainty is better than severity, but it is the judgment of eminent jurists, confirmed by reason and fact, that the severer the penalty, the greater the uncertainty. We add, there is cruelty also. The law that is never sure

must be always unequal, often grossly unjust ; we mean, not unjust in reference to guilt, but in partiality and distinction. Let any one compare the many executions with the many pardons or commutations, and see if there be any justice, or pretence of justice, in half of them. Here is a double wrong. If the law be divine, the penalty righteous and salutary, men have not even a discretionary power, after proving the guilt. And when, disregarding this, they exercise not discretion, but caprice, policy, and passion, hanging a murderer to-day, and pardoning one to-morrow, and hanging the next lest two successive pardons be dangerous, and pardoning the next lest so many executions seem sanguinary, it is using a mild word to call it unjust. Such legislation is a bold and cruel mockery. It mocks itself, and common sense, and the people's safety, and the criminal's deserts, and the God of equal justice. It trifles fearfully with the sacredness of life, whether you take one side or the other of the great question.

And be it noted, this terrible defect belongs to the very nature of the law. It is not accidental, it is not temporary or local. It is inherent, universal, and unavoidable. It grows out of the severity. Such a law *cannot* be uniformly executed. Neither the executioners, nor the people, who in fact are the executioners, will bear it. They will rather commit the most palpable inconsistencies. They will hang men, as they often have done, in the face of the pardoned convict, and pardon others within sight of the loaded gallows. Instances may be found along the whole line of blood ; our own neighbourhood and the past year will furnish them. In Rhode Island, Gordon was executed within the very walls that held three murderers, convicted and undoubted murderers, whose sentences had been revoked, and their lives spared ; while Gordon's brother, believed to be the instigator of the whole foul plot, has been twice tried without a verdict, and is now at large on bail. In Massachusetts, the recent execution of Barrett, at Worcester, was followed by another murder within a few days, in sight of the very place of execution, and De Wolf was arrested, convicted, and condemned ; but eight thousand voices called for mercy, and the sentence has been commuted. We rejoice in the result, but the consistency is another question. We rejoice that the life of Mercer was not taken ; but that he should

have been wholly unpunished, his high-handed murder actually applauded, and the advocates who had procured his acquittal on the plea of insanity welcomed to the city with public and tumultuous acclamation of both sexes, is a melancholy proof of the impotence of the present law, and its gross injustice. Mercer was released and applauded in Philadelphia for murdering the seducer of his sister ; Eager was condemned and hung in New York for murdering the seducer of his wife ; and the difference between them was, that Mercer was conscious and proud of the act, Eager was intoxicated and bitterly repented. We have no sympathy with an indiscriminate and reckless mercy. Mercy it is not, but cruelty, to the offender, to the injured, and to society. But we ask, whence comes it, and who are responsible. Has it no connection with the nature of the penalty ? Can rulers and jurors be just, in the eye of the law, if the law be not sustained by the community ? Here is another wrong, inflicted upon another party. We require our jurors to be just, and our rulers to execute the law, and we ourselves render it all but impossible. Ten years ago, Governor Everett made an appeal to the legislature of Massachusetts, on this very account ; saying, “ The law must be respected as well as obeyed, or it will not long be obeyed. A state of things which deprives the executive of the support of public sentiment, in the conscientious discharge of his most painful duty, is much to be deplored.” It does not lessen the force of the argument, that this appeal had regard to other capital offences besides murder. The principle is the same, and the argument is strengthened so long as those other offences are retained as capital. It is a singular commentary on the criminal code of this good Commonwealth, that, while arson and burglary have been frequent occurrences, and robbery and rape not very rare, the penalty of death has seldom been executed upon them for thirty or forty years ; while of murderers themselves more have been spared than hung. During this period, how many eyes have been wilfully shut, laws trampled upon, and criminals emboldened ? Are these necessary evils ? No ; a different penalty might greatly diminish, if not wholly prevent, them. They belong to a law which never was equally enforced, which never can be made sure, but which, in its essence and unavoidable operation, is uncertain, unequal, and fearfully unrighteous.

If we look to England, the evidence of these evils becomes oppressive. It has compelled a constant mitigation of the bloody code through the last hundred years. The principle on which this change has been made belongs to every infliction of the death-penalty. It is the sense of injustice, or at least the fear of injustice, so strong as to disregard an oath rather than execute the law, and turn criminals loose upon society rather than punish them with extreme and irrevocable severity. Blackstone, in his day, protested against "so dreadful a list" of capital offences, and bore a testimony against them which has come in fact to apply to every one, murder not excepted. "Juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offence; and judges, through compassion, will respite one half the convicts, and recommend them to the royal mercy." Every one knows what cunning and falsehood were resorted to, and perjury braved, to save offenders from the rigor of the law; as where a woman, convicted by her own confession of stealing much more than the law declared to be worthy of death, was found guilty of stealing but thirty-nine shillings, and thus saved. Of two persons indicted for stealing the same goods, one was found guilty of enough to hang him, and the other of so little that he was released. Such facts abound. Lord Suffield, speaking on this subject, said:—"He held in his hand a list of five hundred and fifty-five perjured verdicts delivered at the Old Bailey, in fifteen years, beginning with the year 1814, for the single offence of stealing from dwellings; the value stolen being, in these cases, *sworn* above forty shillings, but the verdicts returned being 'to the value of thirty-nine shillings' only." Now an oath is an oath; and if men will violate it in one case, they will in another, where the same motives are addressed. Nor is this bare assertion. The known cases are not few, the unknown may be many, in which, by bold perjury, or crooked casuistry, or the aid of technicality, the guilt of murder has been changed to manslaughter, or no verdict rendered, or an acquittal given, or, at the worst, commutation, if not pardon, obtained.

And not jurors only, but the whole community, are similarly affected, and affect the entire administration of justice. It is always more difficult to convict after an execution than before. In a state of anarchy and times of savage ferocity, as

during the Reign of Terror, the sight of blood may madden the populace, and they and their leaders call for quicker and quicker modes of wholesale slaughter. But where law is supreme, especially in our day and land, it is instructive to see the effect of a single death on the gallows. There is a silent, often ill-suppressed, breathing of either satisfied or sorrowful feeling. The next prisoner, though guilty of the same crime, perhaps involved in the same plot, cannot be so easily convicted. But then comes the injustice, and the dreadful *accident*. A long interval elapses, crimes are committed, and the people call for another example. The first offender is sure to be a victim. He has miscalculated ; he has not watched the ebb and flow of the great tide. Not for the peculiarity of his offence, so much as for the peculiarity of his time, he must die. Not because many may follow his example, but because many have just been spared, he must die. He who follows him in the same career, though his purpose be formed at the foot of the gallows, and the fatal deed perpetrated before the revelling crowd disperse, will have a better chance of escape. This also is sustained by facts both in Europe and America. The whole difficulty of convicting and executing, whatever the offence, has long been admitted, and is constantly increasing. The law itself is constantly changing, and its changes show how dreadful has been its injustice, as well as powerless its terror. It is found in England, that, since the year 1810, more than fourteen hundred persons have been executed for crimes which have now ceased to be visited with death. With us, the changes in the statute-book have been reluctantly made, but the changes in public sentiment are such as to annul the statute, or aggravate its injustice. Hundreds of jurors are summoned, to find twelve that can or will serve. And when they have served, and have found complete evidence of guilt, they sometimes, as in a case in Massachusetts not long ago, ask if they may bring in a verdict of manslaughter, but not being allowed, bring in a verdict of murder with a petition for mercy.

Such are the obstacles and inconsistencies, such the uncertainty, inequality, and injustice of the present law of death. Whatever the causes, the facts are indisputable. They seem enough to prove the inefficacy of the punishment, and the necessarily bad effect upon the sentiment of

reverence for law or life, and equally upon the temptations to crime and calculations of impunity. We leave it to sounder heads to judge of the principle which Livingston has laid down as one of the postulates of his famous code :— “ The law should never command more than it can enforce. Therefore, whenever, from public opinion or any other cause, a penal law cannot be carried into execution, it should be repealed.”

3. Capital punishment has failed to punish the murderer, or relieve the friends of the murdered. We have shown, that, in a large proportion of cases, it fails to reach the murderer, — that it is never so sure as to preclude a fair calculation upon the chances of escape, — and that its infliction depends on other circumstances besides guilt. We might show, that, where it does fall upon the murderers, and upon the most awfully guilty, it is by no means sure to bring upon them a punishment which they will feel as such, or which will bear any proportion to the enormity of the crime. There is an enormity in wilful murder, which we are so far from attempting to extenuate or shield, that we pronounce it inadequately punished by the taking of life. We mean, of course, in the worst cases, those alone in which the community say it should be visited with death. They are the very cases, ordinarily, in which death is the least punishment. The most criminal are usually the most hardened, least sensitive to the pains of execution, which are momentary, or to the ignominy, for which they care nothing. The many instances of stupid brutality or shocking levity, under sentence of death and at the very gallows, should teach us something. It should be enough to know of one case like that so recent in New Jersey, where Robinson, the convicted and confessed murderer of Suydam, declared that he should “ burst out a laughing under the gallows,” called for “ a band of music, the big field, and twenty thousand spectators,” and said in his most sober moments, “ I ’ve suffered too much poverty and misery in this life to care very much about leaving it.” Was *he* punished ? Saying nothing now of the doubtful, or rather, pernicious, effect on the witnesses, what are we to think of the relation of the suffering to the criminality, and what of the responsibility of sending such a soul to judgment ? Let those, especially, consider, who are sure that death consigns the soul to an eternal punishment, for whose

torment there can be no insensibility or reprieve, and from whose unutterable misery even that wretched man might possibly have been saved by an imprisonment, which he would feel more keenly, and could use profitably if he would. Then let such believers, and all, consider further, that the very fact of this being an extreme case only goes to prove either the injustice or the inefficacy of the common punishment. If the many who suffer on the scaffold are less shockingly guilty and hardened than Robinson, it would seem a strange reason for condemning them to a present punishment which they feel infinitely more, but which falls alike on all degrees and differences of guilt. Add to this the large number of the accused whose guilt is presumed rather than proved ; add that other mournful class whose innocence subsequent events have made probable, and sometimes certain, — and say, if you are willing to continue your own share of accountableness for such unequal dealing with crime, or if you do not think it possible that human ingenuity or Christian fidelity may devise a punishment that will be at once more severe and more just.

It has always been assumed, that the love of life is the strongest of passions, and its loss the greatest terror. Without denying the general truth, we maintain that there are many facts which greatly qualify it, and are too little considered. Most of the sick, who expect to die, die calmly ; the good in faith, the bad in helpless submission. Multitudes, particularly of the vicious and criminal, consider their death as fixed and inevitable. Thousands brave death in war, in pestilence, in perils of ocean, in destructive occupations, — now for the life of a friend, now for the smallest lucre, and now for the very love of daring and vaunting. More than this, convicts have decidedly preferred death to imprisonment, as may be seen in detailed cases in O'Sullivan's Appendix. Indeed, on any fair doctrine of chances, men deliberately expose their lives to as great danger, at least, as does the cautious murderer, with all the present uncertainties, through detection, arrest, witnesses, advocates, jury and judge, pardon or commutation. The bad may not coolly calculate upon all these, but the knowledge of them has its effect, quite equal to the fear of death. Moreover, death itself is often invited. Every form of death is premeditated and self-inflicted. The water, the rope, the razor,

the dagger, the pistol, and poison, are in frequent use in every land. Governments cannot monopolize the liberty of killing. Individuals use it everywhere, with and without known cause. Suicides in some countries are ordinary events ; as in France, where the record of a single year, 1839, gives 1,747 cases. Where is the awful dread of death ? Men may continue to quote from the father of lies, — “ Skin for skin, all that a man hath, will he give for his life.” The aphorism of Bacon is more worthy of consideration : — “ There is no passion in the mind of man so weak, but it mates and masters the fear of death.”

No ; the murderer is neither effectually deterred, nor adequately punished. The punishment falls upon his friends more than himself. His innocent family, many virtuous connections, may suffer for generations from the grief and the dishonor. Is it said, This is a necessary consequence of all sin and crime ? So far as it is necessary, let it come. But there is a dread peculiarity in this mode of punishment, which brings a needless aggravation of shame and sorrow, and is felt more by the innocent than the guilty. Then, what reparation or relief does it bring to the friends of the murdered ? Too often are *their* sorrows and suffering forgotten, in compassion for the reckless assassin ; a gross injustice, with which possibly the mode of punishment has more to do than the fact. But neither the fact nor the mode should make our mercy forgetful and cruel. It is cruel to send our sympathies only to the cell of the felon, and not to the home and hearts which he has made desolate. Yet we would offer those hearts a truer and sweeter balm than revenge. If they crave that, our pity may be the greater, but it is wholly changed. The deeper their wounds, the more would we implore them to try the Christian remedy, — forgiveness ; not the forgiveness that palliates crime, or would avert its just penalty ; but that which prays that life may be spared, and opportunity given for contrition and reformation. Should the hand of violence strike from us the most valued life, it would be a poor comfort to know that another life must be sacrificed, other friends agonized, and a guilty soul destroyed. Grant us rather the solace of doing what we may, with justice and security, to overcome evil with good, and at most inflict a punishment that shall be felt in the workings of repentance, not in the goadings of retaliation. This to many

will seem visionary. Enough, if it be Christian. It is not Jewish, we own ; it is not heathen or savage ; neither is it lax or perilous. It possesses the element of justice as well as mercy, with more of certainty, strictness, and probable efficacy, than any known operation of the law of blood for blood. It is worth serious thought, whether the common arguments for capital punishment contain any thing distinctively Christian. Of the several objects of law and penalties, — reformation, restitution, protection, punishment, — does it not put the first last, and the last first ? And does it accomplish either ? Reformation is scarcely possible, and is usually scouted. Reparation is never pretended. Punishment itself is altogether uncertain, and fearfully unequal. Protection, or prevention, alone remains. That we are to consider. All we have said will pass for little, with many, if it be confined to the murderer, or his friends, or the friends of the murdered. We take, then, another position.

4. Capital punishment fails to protect society. As at present administered, the law affords no protection against the murderer himself. It does not always pursue him, but sometimes exults in his impunity ; it creates or uniformly encounters many obstacles to his conviction ; it suffers him to live, though condemned, and often opens his prison-door. But more, it fails to protect from other murderers. This is an essential view ; it involves the strength or weakness of the common defence. The strength of this defence consists in the example ; its chief argument is the example. This is its demand, this its confident boast, this the avowed necessity, from which the right and duty follow. We bring it to the test of facts.

If facts already cited are facts, the death of the murderer has not prevented other murders, or lessened the proportion of them to the population. The proportion has been largest where the axe and the halter have been busiest. Of any crime less than murder, this is acknowledged, and the acknowledgment is material. The whole civilized world confess, and make proclamation now, that the punishment of death is not favorable, but pernicious, in a multitude of offences once capital. Is not the influence the same in all offences ? We speak of the example. There it is, be the offence large or small. There is death ; and in some countries, death has been a moral certainty for the offender. Yet

in its very face, offenders have braved it, and beneath the very gallows have so terribly multiplied, that the collected wisdom of England and France has cried out against it, demanding a change. The change has been made. One hundred and fifty capital crimes have been expunged from the English code ; a motion was made in Parliament in 1833 to expunge all that remain excepting murder, and failed by only one vote ; in 1840, another motion was made for a total abolition of the death-penalty, and was sustained by ninety-three members. Nearly all men admit, both there and here, that murder alone should be punished with death, and against even that there is a power rising everywhere which has ceased to be despised. Whence this great revolution ? Not least, if not most, from that very fact on which the retainers of capital punishment now plant their foot, — example. The example is against them. Death on the scaffold has not prevented, but provoked crime. The sight of the gallows, with victim upon victim, has produced levity, licentiousness, and a frightful increase of iniquity. And if it has produced, or not prevented, minor offences, will it prevent greater ? Will the same spectacle, or the same penalty, which fails to deter from crimes that are cool and deliberate, prevent those which proceed from the most vehement and reckless passions, the malice, wrath, jealousy, and drunkenness of man ? On criminals themselves we know the effect. All conversant with them tell us it tends to make them worse. Mr. Wakefield and Mrs. Fry, both so familiar with Newgate, declare that their opinions were there changed from a favorable to a wholly unfavorable conviction as to the efficacy of public executions. The closest observers have expressed a similar opinion as to the effect on the whole community. And we feel authorized in saying, that capital punishment has not only failed of its object, but has caused immense evil.

We say has *caused* ; that may be too strong a term. We admit, it involves a question on which a great deal depends in this whole discussion. We need no doubtful arguments. We will not assume more than can be proved or possibly known, as do many on both sides of the controversy. The opposers of capital punishment clearly assume too much, if they insist that the gallows is certainly the cause of all the evil it witnesses, or that similar evil does not attend or follow many innocent exhibitions, and even religious gatherings.

The more we consider the common hasty reasoning upon cause and effect, — one of the deepest and highest of all problems, — the more we distrust it, on this and every subject. Men know very little of causes, in physics, morals, or events. But this we aver, — all that we *do* know, in this connection, is against capital punishment ; and that is all we assert or want. The argument, at this point, is necessarily one of inference. And the inference begins not with us, but with those opposite. They infer, or rather assume, that the influence of capital punishment is salutary and effectual. We assume nothing, and only infer the cause of that which we see, — facts. The facts they admit, but deny that they are *effects*. Grant that they are not effects, or rather that we cannot be sure of it. Can we be sure of any thing ? How are we ever to know that any law or custom has any influence ? Is there any better mode than observation ? Grant, again, that observation brings different results, and that facts may be found, of every shade and grade, for every conclusion that we wish to establish. Facts still remain, and are the best, and at this point the only possible, evidence. Those two thousand executions a year in the time of Henry the Eighth may have had no connection with each other, and none with the many of Elizabeth's time afterward, when " the rogues were still trussed up apace," as the narrator says. But this is certain, — they did not *prevent* the many crimes that followed them. The forty arrests for robbery at the execution of two men in England may not have been caused by the hanging ; but certain it is, the hanging did not prevent them. The recent execution of Zephon, in Philadelphia, did not prevent four other murders within two days, near the scene, though the poor negro was twice hung, his neck not being quite broken by the first fall. The hanging of Barrett at Worcester, for rape and murder, did not prevent another murder within ten days, close at hand, nor another rape very soon after. We care not to multiply cases. They abound, as given by O'Sullivan, Spear, and many others. They prove this, if nothing more, — the utter impotence of the gallows to awe even the gazing crowd, or restrain from instant and continued crime. They confirm what the pick-pocket said in Newgate, — " That executions were the best harvests that he and his associates had."

And then we retort, and say to the defenders of capital

punishment, Prove something in its favor. Prove that it is the cause of some good ; show some connection between your principles and known results. Your whole argument is based upon precisely the kind of reasoning, which you call so loose and vapid in your opponents. Worse ; you not only reason from facts which may be owing to other causes, but from facts which do not appear. Assume less ; prove something ; prove that the gallows does any good to the criminal or the innocent, the old or young. Demonstrate by any reasoning, by any facts, by any favorable influences, — demonstrate, by any possible means, the beneficial effects of the example of public executions. True, the publicity of executions has been partially removed. A portion of Europe, and ten of our own States, have been constrained to unsay what had always been said before, and have thrown away at once half the efficacy and the strongest prop of the honored institution. Prove still that even now, in the prison-yard or prison-dungeon, a violent legalized death secures any protection to society, or bestows any blessing on mankind. We deny it.

We have dwelt too long upon the negative ; yet we may call it positive, in the power of facts, principles, and avowals. We deny the right of capital punishment, as sustained by necessity, or demonstrated by salutary efficacy. We assert that there is no proof of its good effects, and abundant proof of the bad. We ask room for two other positions, partaking still more of the positive.

5. Capital punishment has done irrevocable wrong. Unintentionally, yet it may be responsibly, in its attempt to deter or punish the murderer, it has been itself the slayer of the innocent. There is an early and immutable law of Jehovah, — “Thou shalt not kill.” We believe this refers only to murder, and has been wrongly used against all taking of life. Jehovah himself, after giving it, allowed the taking of life in the Jewish economy, and Christ interpreted the commandment, “Thou shalt do no murder.” But we see in that commandment an obligation to guard the sanctity of life most scrupulously. It forbids the stoutest loyalist and the freest self-defender to take life, in any case, rashly or needlessly. In connection with the Christian law, it says it is far better to yield life to violence, than to take it by violence. That we hold authority from man, that government is the

creature of God, and anarchy fatal to society, are not facts to lessen the sacredness of life, but to guard it the more, and to fill us with awe of our own power over it. Is it not, then, a terrible fact, that life has been one of the lightest bawbles with which kings or subjects have ever played? Is it not the most melancholy phase of history, that more has been expended in the destruction of life, than for all other objects, — that human blood has been spilled like water, not only by the hand of violence, but with the sanction of law and religion, — that governments, instituted to protect the lives and liberties of men, have held their lives cheaper than the smallest coin or the slightest fame, and have erected civil, martial, and ecclesiastical altars for the sacrifice of human hecatombs? Governments declare and sustain war; and war has slain its myriads, by a right which Christianity renders doubtful and fearful, at the very lowest point of view, — at the highest, impious. Governments sanction duelling; and the real or attempted murderers walk among men unrestrained and honored. Governments have made capital punishment their special prerogative; and not an age or a year, probably not one day of the world, has passed since this prerogative was used, that it has not, in some quarter, cut short the life of an innocent man.

The calmest retrospection will show that this statement is not extravagant. Take into account the reckless disposal of life under the despotisms of the earth, — remember the multitudes that have been slain by heathen and Christian powers, either as victims or heretics, — consider the number and rigor of penal laws in the best governments, until very recently, — consider the proverbial uncertainty of the law, the necessary dependence on circumstantial evidence, the fallibility of human judgment, and the worse than fallibility of many judges and jurors, under the sway of prejudice, ignorance, excitement, interested or local considerations, — and you have a countless host of doomed sufferers, wholly guiltless, or but partially guilty. The mind revolts, the heart grows sick, at the thought of the vast numbers of innocent beings who have been immolated on this shrine of assumed necessity. So many are *known* to have thus perished, with all the advantage of able and humane defenders, and without any malice, that, when we attempt to add the unknown and probable, it seems impossible to do less than say with La-

fayette, — “ I shall ask for the abolition of the penalty of death, until I have the infallibility of human judgment demonstrated to me.”

England is a land of freedom and law. One of her best sons, and one competent to judge, Sir James Mackintosh, showed by careful returns, that, when capital punishments were very frequent in England, “ the average had for many years been at the rate of one person executed every three years, whose innocence had been afterward satisfactorily established.” A committee who have since followed up the inquiry there have found more than a hundred, a late account says, a hundred and fifty cases. Dymond tells us, that at one assizes not less than six persons were hanged, who were afterwards found to be innocent. Smollett, in his history of England, says, — “ Rape and murder were perpetrated upon an unfortunate woman in the neighbourhood of London, and an innocent man suffered death for this complicated outrage, while the real criminals assisted at his execution, heard him appeal to Heaven for his innocence, and in the character of friends embraced him while he stood on the brink of eternity.” In Dublin, 1728, a surgeon of note was found alone in the house with his maid-servant who had been just murdered, and he himself was bloody ; he was tried and convicted, protested his entire innocence, but was executed ; a few years after, the actual murderer confessed to a priest, that he had entered the surgeon’s house for robbery, when no one but the girl was there, and being stopped by her as the gentleman returned, killed her and fled. Mrs. Child, in her Letters from New York, gives the particulars of two cases of strong circumstantial evidence, one in New York, and one in Missouri, where the innocence of the accused appeared fully after they were hung. The case of Dr. Hamilton in Kentucky, some twenty-five years ago, made a deep impression. Dr. Sanderson was found murdered in a cross-road, with Dr. Hamilton’s pistols lying by him. The latter, of course, was arrested and tried ; he made his own defence, and showed that he could not have been such a fool as to take that mode and place of killing a friend, and leave his pistols to betray him ; but it availed not ; he was executed, and in three months, two robbers confessed on the gallows that they first stole Dr. Hamilton’s pistols, and then committed the deed. In a speech at Exeter Hall, 1832, Mr.

O'Connell says : — “ I myself defended three brothers of the name of Cremming, within the last ten years. They were indicted for murder. I sat at my window as they passed by, after sentence of death had been pronounced. Their mother was there, and she, armed with the strength of affection, broke through the guard. I saw her clasp her eldest son, who was but twenty-two years of age ; I saw her hang on her second, who was not twenty ; I saw her faint when she clung to the neck of her youngest boy, who was but eighteen ; and I ask what recompense could be made for such agony ? They were executed, — and — *they were innocent.* ”

There are no words for such facts. They are unutterably awful, and should make the whole civilized world pause. ONE only knows how many they are. It is useless to say they cannot be numerous, when, besides those not ascertained, there is the glaring fact, that those which are known were seemingly among the least doubtful cases. This is the most serious and terrible feature. The evil is in no way accidental, and no one's fault. It is not haste, it is not malice, it is not the sin or error of judge, jury, or witnesses. The law is plain, the evidence direct, the guilt proved, — and yet there is no guilt ! It is perfectly astounding, to see the weight of evidence all refuted by subsequent events. A father has been murdered at home ; the only person there a son, sworn by a sister to have been dissolute and anxious for the father's property ; his shoes are tracked from the house to the spot of the murder, and his hammer is found concealed with marks of blood ; he is necessarily condemned, — and on her death-bed that sister confesses herself both the parricide and the fratricide. Two men have been seen fighting in a field, old enemies ; one is killed by a pitchfork known to belong to the other, and too late this other has been found innocent ; the true murderer sitting on the jury that tried him. A father and daughter have been overheard in violent dispute ; the former goes out and locks the door behind him ; groans issue from the room, with the exclamation, “ Cruel father, thou art the cause of my death ! ” the daughter, found stabbed and dying, signifies by a sign that her father is the cause ; — he returns, betrays every sign of guilt, and is hung ; — a year afterward, a letter is found in her own hand, declaring her determination to kill herself, because her cruel father forbade her marrying as she wished ; and the public authorities, to atone for the

error, wave colors over his grave, in token of his innocence!

We refer to none of the cases of innocent death caused by the confession of the sufferers themselves; for though frightful, they are few, (yet if we take the case of witchcraft, these innocent and fatal confessions have not been few,) and belong to a kind of monomania, for which no human wisdom can account and no law provide. But we protest, in the name of justice, religion, and humanity, against every unnecessary peril of this awful character. And we repeat, it belongs to the very nature of the penalty. Continue that, and you cannot avoid the peril, by all the wisdom and care of a combined world. Those proved guilty must be punished. Punish them in a way not irremediable. Do you say, If innocent, any punishment is a wrong, and cannot be recalled? True, this is a necessary evil. But death is *not* necessary. And death, death only, is wholly irremediable. This is the point; this is the mighty wrong. And until it can be demonstrated that it is an absolute necessity, — as it never can be, — no fallible creature, no earthly power, can pronounce the irrevocable doom, without assuming a sovereignty and defying a danger that are perfectly appalling.

6. We come to our last position. Capital punishment has been abolished, with safety and advantage. It has been abolished universally for a vast many offences to which it was once attached; and though fears for the consequences were not wanting in any case, and in some were as terrible as those that now prevent the last change, the offences themselves, thus relieved, have materially lessened, and no government now could be forced back in the experiment. But the abolition has not been restricted to minor crimes; it has been carried to the greatest; and it will require more sophistry than has yet been found to prove it a failure.

We have used too much space to give the historical details on this point, and we will hope they are not unknown to our readers. They begin with Rome, where the Portian law forbade the infliction of the punishment of death upon a Roman citizen for any cause, and continued in operation two centuries and a half. Montesquieu, Gibbon, and Blackstone speak of the good effect. The last says: — “In this period, the republic flourished; under the emperors, severe punishments were revived, and then the empire fell.” In

Russia, during the reign of Elizabeth, and then of Catherine, capital punishment was expressly and wholly abolished, and is said to have been used but on two occasions to the present time. Blackstone, in his Commentaries, and Count Segur, the ambassador, bear unequivocal testimony to the good consequences of the change, in the diminution of crimes. In Tuscany, the Grand Duke Leopold, in 1786, abolished by law "the punishment of death, for ever." For a quarter of a century, this edict remained in full force, with the happiest effect. Napoleon, for reasons which we could quote in his own language, characteristic and instructive, repealed the edict and restored the punishment. Dr. Baird and Mr. Cheever have ventured to proclaim, that this restoration was owing to the failure of the experiment. We find no ground for such an intimation, and are content to set against it the positive declarations of Leopold himself, Berenger and Carmignani of France, Franklin, Rush, and Livingston of America. We add the experience of Sir James Mackintosh ; during the entire period of his government of Bombay, the punishment of death was not once inflicted ; and he himself says of it, "Two hundred thousand men have been governed for seven years without a capital punishment, and without any increase of crimes." And we might add the experience of Belgium, where, without its formal abolition, this punishment is said to have been disused now for twenty years, with none but good results.

These facts are enough. We can imagine but one answer to them, or one evasion of their force. "The trials have been too short to verify the principle." We reply, "Make them longer." And we have a right to ask it. As citizens and as Christians, we demand that the professed religion of our land be allowed at least a fair trial, where justice, life, and eternity are involved. It is not humanity, it is not common, still less, Christian wisdom, to refuse to attempt reforms, because they have succeeded only as far as they have been tried. Besides, the first trial, the first ten or twenty years after a change which is considered dangerous, ought to be the worst. They ought surely to disclose some of the danger. They do not ; and they remove the last foothold of the gallows. Experience proves nothing in its favor ; its necessity cannot be established ; its influence is all against it. Its assumption of sacred ground is at best an assumption, pressed with difficulties, and feebly sustained by fact even in

the early ages and the theocracy of the world. In Christianity it finds no countenance. Its long history has been one of carnage and dread accountableness. The millions of the guilty, whom it has doomed alike, though with every shade of guilt, from the lightest to the darkest, the army of the innocent, whom it has cut off in mid-life, imperatively demand the fair and full trial of a more equal, more merciful, more just, and less irrevocable punishment.

Imprisonment for life is punishment enough for any one to bear. It may be made terrible, beyond all other. It may be clothed with a fearfulness that shall be more powerful to deter or punish than all tortures and deaths ; and this, too, without cruelty. Let it be certain, let it be sudden ; let the murderer, the moment he is sentenced, be borne away silently and swiftly from the face of man and the light of heaven, to be consigned for a time to a darkened cell, alone with his conscience and his God, the past and the future, — soon, indeed, to leave that intolerable dungeon, but to leave it only for the simple meal or the busy workshop, and then return for the long night, and again rise to the same toil, and again go back to the same loneliness, the same, day after day, for weeks, months, a year, five, ten, twenty, fifty years. Is there a man that can think of this, without a more awful shudder and horror than the fear of death can cause ? The only objection is its severity. Yet they who bring that objection say that it will not deter from crime ! It need not be hurtfully severe. We would relieve it of all those aggravations which injure the mind or the body. We would give it all the freedom and social privileges consistent with order and safety. We would surround it with those kind moral influences which are found most effectual in softening the heart and converting the souls of men. Nor have we any of the poor fear, that this very kindness will defeat the object. It will leave enough of the terrible, in the monotonous, unending imprisonment. With all prisoners, kind treatment is as sound policy as it is true humanity. The principle is now demonstrated, and we see it stated in prison reports, that the convicts who are best treated are least likely to return. “Where the greatest severity is practised will be found the greatest number of recommitments.” This is human nature, and might have been learned before. Let society treat its offenders severely, — they will avenge themselves as soon as they can. Make the laws hard, even

seemingly unjust and vindictive, — those laws will be again and again broken. Here is one of the causes of the pernicious effects of all capital punishment. Let it be avoided, if there be a change. Let imprisonment be real and enduring, consuming all the active portion of life, or let it be perpetual ; but fill it with healthy occupation, with mental and spiritual blessings. Let earth be shut out, but heaven freely come in. Above all, let it be *certain*. Why can it not be ? For no reason but the use and abuse of the pardoning power. That, at the worst, would not be worse than at present. It might be infinitely better. The court that condemns has now the power to order a new trial, if new evidence appears. But this is a mockery, if you kill the man before the evidence can appear. Some of the States, as Vermont and Maine, have recently extended the interval between sentence and execution to a year or more. This is the beginning of mercy, though it seems little more than justice. Why not go on ? Allow a longer interval. Let the period before death be five years, ten, forty, a life, — where is the danger, either to society or the prisoner, if there be a power lodged solely in the court of ordering another trial, should circumstances in their judgment demand it ?

Ay, but the murderer may commit another murder, says one more objector. The prisoner may kill his keeper. This, it has been confidently said, is alone a sufficient reason against the change. Then is it a sufficient reason for hanging the insane man who kills his keeper. If you can protect the state by confinement in the one case, you can in the other. But though you were compelled to punish the *repetition* of murder with death, it would be no argument for the law as it now stands and works. Besides, most of those who have killed their keepers have been men doomed to die themselves. It is an evil of the present system, and we throw back the objection. Let men live, deal with them mercifully as well as justly, and what motive will they have for violence, what desire to refuse lenity and provoke a severer punishment ? Let them live to repent, not to destroy. Let them live to work for society which they have defrauded, or for the families which they have bereft. Then may all the purposes of law and penalty be accomplished ; condemnation, confinement, suffering, reparation, and probable reform. Is not the bare possibility of this better than the certainty of the present accumulation of wrongs and evils ?

The most depraved and guilty are still men ; God requires that they be treated as men. Let society first protect itself by universal moral education. Let it be more anxious to prevent crime than to punish it. Let it punish in a way to prevent ; let it not expose and tempt to evil, and then cut off the evil-doer. While it compels men to fight, and honors them in proportion as they kill, it invites the retort of the murderer in England : — “ I have killed many men to please the king ; why should I not kill one to please myself ? ” Yet more, while those who *make* murderers are protected by law and upheld by high influence, and the largest number of murderers issue from the licensed dram-shop, what justice is that, or what wisdom, which rewards him who maddened the brain of another until the fatal blow was given, and hangs him who madly and unconsciously gave it ? Drunkenness is no apology ? No ; it is an aggravation. Excuse it not, but punish with some measure of justice. It may be, that many would think it a lighter wrong to themselves and to society, that one of their family be even murdered in his innocence, than that their sons be degraded and lost through the selfishness and depravity of men who go unpunished and unrestrained. Human laws may not be able to reach both offences equally, but they can deal with them more justly. They have no right to give impunity to the one, and visit upon the other the heaviest retributions.

Let law and religion be supreme. Let the violent and corrupting be restrained, — not encouraged, nor destroyed. Let the neglected and corrupted be helped, — not left to desperation. Let the ignorant be instructed, and the willing employed, the exposed protected, the fallen raised, and the innocent saved. The guilty must suffer ; let them suffer. Let them be surely and justly punished. The murderer especially, the wilful destroyer, the violator of God’s holy law and man’s sacred life, let him *know* that he will suffer, — not alone in the tortures of an outraged conscience, but in exile from an outraged community, with time and solitude for busy remorse. Let him suffer, — not in vengeance, that is not ours, — not for satisfaction, that is impossible, — but for the security of the good, the terror of the wicked, the penitence and regeneration of his own soul. Let God’s first mark rest upon him, that none may slay him, but all recognize and reprobate, while they pity and would save.